

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DON LIA, MOBILE MANAGEMENT, :
LLC and N.R. AUTOMOTIVE, INC., :
 : Case No. 11-CV-3621 (SJF) (ETB)
Plaintiffs, :
 :
-- against -- :
 : **NOTICE OF APPEAL**
MICHAEL SAPORITO and :
JESSE ARMSTEAD, :
 :
Defendants. :
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PLEASE TAKE NOTICE that plaintiffs Don Lia, Mobile Management, LLC and N.R. Automotive, Inc. hereby appeal to the United States Circuit of Appeals for the Second Judicial Circuit, from a final Judgment in the action captioned above dated November 9, 2012 (the “Judgment”), issued pursuant to a Memorandum Decision and Order of the Honorable Sandra J. Feuerstein dated November 6, 2012 (the “Decision”); specifically, from those parts of the Judgment and the Decision which:

- (i) dismissed plaintiffs’ First through Seventh Causes of Action; on the grounds that the District Court erroneously applied the common law doctrine of judicial estoppel under the controlling standards of this Circuit;
- (ii) improperly considered matter extrinsic to the four corners of plaintiffs’ Complaint in ruling on a motion brought under Rule 12(b)(6) of the Federal Rules of Civil Procedure;
- (iii) dismissed the Eighth Cause of Action, for breach of contract, brought by plaintiff N.R. Automotive, Inc. against defendant Michael Saporito, as time-barred under the applicable statute of limitations;

(iv) dismissed those portions of the Third Cause of Action, brought by plaintiff Don Lia for breach of fiduciary duty in connection with defendant Michael Saporito's failure to perform under the "2003 Agreement" and "2006 Agreements" defined in the Complaint, as time-barred under the applicable statute of limitations;

(v) dismissed the Fourth Cause of Action, brought by plaintiff Mobile Management, LLC against defendant Michael Saporito for breach of fiduciary duty, as time-barred under the applicable statute of limitations; and

(vi) dismissed the Third Cause of Action, brought by plaintiff Don Lia against defendant Michael Saporito for breach of fiduciary duty, in its entirety, for failure to state a claim upon which relief may be granted.

Dated: Carle Place, NY
November 28, 2012

STEVEN COHN, P.C.

Attorneys for plaintiffs Don Lia, Mobile
Management, LLC, and N.R. Automotive, Inc.

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TO: ALL COUNSEL OF RECORD ON ANNEXED CIRCULATION LIST

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